

1 IN THE UNITED STATES DISTRICT COURT
2

3 EASTERN DISTRICT OF TENNESSEE
4

5 AT CHATTANOOGA
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|---------------------------|-------------|
| UNITED STATES OF AMERICA, | : |
| | : |
| Plaintiff, | : |
| | : |
| v. | : |
| | 1:14-CR-109 |
| BRIAN LEE KRZECZOWSKI, | : |
| | : |
| Defendant. | : |

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9 Chattanooga, Tennessee
10 October 15, 2014
11

12 BEFORE: THE HONORABLE BILL CARTER,
13 UNITED STATES MAGISTRATE JUDGE
14

15 APPEARANCES:

16 FOR THE PLAINTIFF:

17 TERRA BAY
18 Assistant United States Attorney
19 1110 Market Street, Suite 515
20 Chattanooga, Tennessee 37402
21

22 FOR THE DEFENDANT:

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27 ARRAIGNMENT/DETENTION HEARING
28

29 UNITED STATES DISTRICT COURT
30

1 THE CLERK: Criminal Action 1:14-CR-109, United
2 States of America versus Brian Lee Krzeczkowski.

3 THE COURT: Counsel, please make appearances for the
4 record, the government first.

5 MS. BAY: Terra Bay for the United States.

6 MR. BERGMANN: Paul Bergmann for Mr. Krzeczkowski,
7 Your Honor.

8 THE COURT: Thank you.

9 We're here this morning for an arraignment and
10 detention hearing. The case came on initially for an initial
11 appearance, and I believe that that's what happened, and we
12 did not get to the arraignment or -- or that. I think that
13 happened Friday. Was that not --

14 MS. BAY: That's correct, Your Honor.

15 MR. BERGMANN: That's correct.

16 THE COURT: All right. I'm going to need to ask
17 Mr. Krzeczkowski a few limited questions.

18 The same questions I asked before, Mr. Krzeczkowski,
19 your name, age, education, and whether you understand what's
20 going on around you today. That will have to happen
21 preliminarily. You do have a right guaranteed by the
22 Fifth Amendment to remain silent, not to incriminate yourself.
23 But usually people can answer those limited questions.

24 You will be under oath, subject to penalties of
25 perjury. And if you were to make admissions about the facts

1 of the case, they could be used against you. And I remind you
2 again you want to avoid doing that.

3 I do need to have you sworn in. So if you would
4 just stand and remain standing there, my deputy clerk will
5 swear you in.

6 (The defendant was duly sworn.)

7 THE COURT: What's your full name, Mr. Krzeczkowski?

8 THE DEFENDANT: Brian Lee Krzeczkowski.

9 THE COURT: And how old are you, sir?

10 THE DEFENDANT: Forty-one.

11 THE COURT: And how much education do you have?

12 THE DEFENDANT: I've got a GED.

13 THE COURT: You have a GED. All right, sir. Do you
14 feel like you generally understand what's going on around you
15 today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Mr. Bergmann, have you had an
18 opportunity to review the indictment with Mr. Krzeczkowski?

19 MR. BERGMANN: I have, Your Honor.

20 THE COURT: Is it going to be appropriate-- We
21 summarized it at the initial hearing. Is it going to be
22 appropriate for him to waive reading of it and enter a not
23 guilty plea to each of the counts?

24 MR. BERGMANN: Yes, Your Honor. Yes, Your Honor.

25 THE COURT: Is that what you want to do,

1 Mr. Krzeczkowski, not to require it to be read, but to enter a
2 not guilty plea to each of the four counts?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. The Court will enter, then,
5 the not guilty pleas to each count of the indictment.

6 Now, with regard to detention or release, the Court
7 has received a report. The report seems to indicate that at
8 some point there might be a recommendation of release, but
9 that certain things have not happened, a home investigation,
10 that sort of thing.

11 What is the government's position with regard to
12 detention in this case, in light of the -- that situation?

13 MS. BAY: Your Honor, first, all four of the charges
14 bring the rebuttable presumption. We are seeking detention.
15 And we are prepared to put on a witness who we expect will give
16 more information than's in the report about the defendant's
17 conduct. And we expect that the probation department will
18 change their recommendation after hearing this additional
19 evidence.

20 THE COURT: All right. Well, of course the -- even
21 if the probation department does change their recommendation,
22 and even though there is a rebuttable presumption, the Court
23 would give Mr. Krzeczkowski a hearing.

24 Mr. Bergmann, are you ready to proceed today?

25 MR. BERGMANN: Your Honor, we will waive the hearing

1 for today. We would like that home evaluation to be done. We
2 don't know whether-- And I'm privy to the information that --
3 about which the U. S. Attorney is speaking. But we will waive
4 the hearing today. We would like for the home evaluation to be
5 done. The family is here. They're willing to take him home.
6 They're willing to comply with all of the conditions that are
7 set forth in this report. But we would like that home
8 evaluation. We think it would bolster his chances to get out.
9 And I think it's going to be a short hearing before that
10 detention -- I'm sorry, before that investigation can be
11 conducted, but we would like to do that. I can file a motion
12 for release, pretrial release, after that report. And I can
13 also talk to Ms. Lindsey, who is the probation officer.

14 THE COURT: What's the government's position on that?

15 MS. BAY: Well, I think that in my speaking with
16 Ms. Lindsey and Mr. Bergmann, Ms. Lindsey indicated she spoke
17 with the defendant's family, they have told her that they would
18 do a certain number of things, which I think are already in the
19 pretrial release report, and she believes that they would do
20 those things. So I don't know that Ms. Lindsey would find
21 additional information --

22 THE COURT: Well, I suspect that they would, too. I
23 don't think that-- You know, they're here for him. They're
24 not going to-- If the report indicates they're relatively
25 minor things that need to be done, and I just would say that I

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1 will assume that they will be done, but I don't see any reason
2 not to hear whatever evidence there is, because I have to make
3 a determination. I mean, I can assume that that's going to
4 happen. They're all here, and I believe that they -- I believe
5 that they will do what she is requiring, from what's in this
6 report.

7 MS. BAY: I think that's a safe assumption, Your
8 Honor. That's why we think we should go ahead and have the
9 hearing today, if the defendant is still seeking release,
10 because I don't believe that the home study would change
11 anything from where it is right now.

12 THE COURT: Well, I don't -- I don't know what it is
13 that I'm about ready to hear, but I would want to know what the
14 recommendation of Pretrial is, obviously. But I would want to
15 hear whatever evidence that I need to hear.

16 There is a rebuttable presumption, Mr. Krzeczkowski,
17 based upon the nature of these charges, that you are a risk of
18 flight and a danger to the community. So that's the -- where
19 it starts. And I'm-- Unless there is a problem with
20 proceeding today on the hearing, these witnesses are here—I
21 think they've probably been here on two occasions—I would
22 prefer to go ahead and have the hearing.

23 MR. BERGMANN: At your pleasure, Your Honor. We can
24 do that.

25 THE COURT: That's all right?

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1 MR. BERGMANN: Yes, sir.

2 THE COURT: Okay? Well, let's just do that. Then
3 Ms. Lindsey can take care of the situation with regard to the
4 needed investigation if that's deemed appropriate. So I'll
5 allow the government to proceed, then.

6 MS. BAY: We would call Special Agent Scott Barker.

7 THE COURT: All right.

8 (The witness was duly sworn.)

9 THE COURT: Just one moment.

10 (Brief pause.)

11 THE COURT: All right. You may proceed.

12 SCOTT BARKER,

13 called as a witness at the instance of the government,
14 having been first duly sworn, was examined, and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MS. BAY:

18 Q Will you state your name for the record, please?

19 A Scott Barker, B-A-R-K-E-R.

20 Q Where do you work?

21 A I'm a special agent with the FBI, assigned to the
22 Chattanooga office.

23 Q How long have you been a special agent?

24 A It will be 25 years in January.

25 Q What type of cases do you investigate?

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1 A Various criminal investigations, white-collar,
2 crimes against children, pretty much whatever comes in the
3 door, really.

4 Q And regarding crimes against children, have you
5 received any special training?

6 A I have.

7 Q What type of training?

8 A I have gone to several in-services concerning
9 violations or crimes against children, investigating those
10 crimes against children cases, how to review computer forensic
11 examinations, things of that nature.

12 Q And about how many crimes against children
13 investigations have you participated in?

14 A It's over a hundred. I don't know the exact number.

15 Q Are you familiar with the investigation that led to
16 the arrest of Brian Krzeczkowski?

17 A I am.

18 Q And could you tell us how that investigation began?

19 A The investigation was initiated by the Gallatin
20 Police Department after a complaint was received by them.
21 This would have been approximately December of 2013.

22 They received a complaint from a young lady who said
23 that she had had been involved in an online relationship with
24 an individual by the name of Brian Thomas; during the course
25 of that online relationship, they began exchanging

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1 photographs; during that time period, the photographs became
2 pornographic in nature; she sent him numerous pornographic
3 photographs of herself, and at the time she was under the age
4 of 18; the relationship ended, and then, like I say, in
5 December of '13 she received a e-mail from him, and then some
6 photographs of herself were actually posted on her Facebook
7 page, they were pornographic, they were pornographic
8 photographs of herself sent back to her e-mail. And then at
9 that point she filed a complaint with the Gallatin Police
10 Department. They init- --

11 Q Did --

12 A I'm sorry.

13 Q You said she received an e-mail before these images
14 were posted?

15 A The e-mail -- yes, the e-mail contained -- the
16 e-mail that she had received contained some of the
17 pornographic photographs of herself. And when she filed the
18 complaint, the Gallatin Police Department initiated an
19 investigation, they began researching the e-mail addresses,
20 the IP addresses, a telephone number that she had been
21 communicating with with the gentleman. And the information
22 came back to the defendant. At that point they contacted the
23 Rhea County Sheriff's --

24 THE COURT: Just one moment.

25 THE WITNESS: I'm sorry.

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1 THE COURT: I'm making sure I'm not lost.

2 THE WITNESS: Okay.

3 THE COURT: She had a relationship online --

4 THE WITNESS: Online.

5 THE COURT: -- with a man that she said was named
6 Brian Thomas?

7 THE WITNESS: Thomas, yes.

8 THE COURT: And then the IP address from the e-mails
9 came back to --

10 THE WITNESS: The residence --

11 THE COURT: -- this defendant?

12 THE WITNESS: The residence where he lives, yes.

13 THE COURT: All right. Came back to his residence.

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 THE WITNESS: At that point they obtained a search
17 warrant, searched the premises, seized computers and hundreds
18 of CDs or DVDs from the defendant's residence.

19 BY MS. BAY:

20 Q Let me ask you one question. While the
21 investigation was attempting to determine who was -- who this
22 individual was, was there an e-mail address associated with
23 this --

24 A Yes.

25 Q -- offense?

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Barker - Direction Examination

1 A Yes.

2 Q What is that e-mail address?

3 A Tennessee trouble2@gmail.com.

4 Q And was there anything regarding Social Security
5 numbers that -- that would lead you to believe that this
6 defendant is the person who was communicating with the minor?

7 A There was a conversation -- as I recall, there was a
8 conversation between the defendant and the young lady in which
9 they talked about -- he made mention that their last four
10 digits of their Social Security number were the name, the last
11 four digits. And I don't recall what those four numbers were,
12 but the last four digits of his Social Security number were
13 the four digits that they were talking about.

14 Q Of his --

15 A Of his --

16 Q This defendant's?

17 A Yes.

18 Q Okay.

19 THE COURT: So the conversation was that her last
20 four digits of her Social Security were the same as the last
21 four digits of his?

22 THE WITNESS: Yes, sir. As I recall, yes.

23 THE COURT: Okay.

24 BY MS. BAY:

25 Q And they matched the last four of this defendant?

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1 A That's correct.

2 Q And so you were talking about the computers and DVDs
3 or CDs?

4 A Yes, ma'am.

5 Q I think you said hundreds --

6 A Hundreds.

7 Q -- of DVDs or CDs?

8 A Yes, ma'am.

9 Q What else occurred?

10 A At that point we were contacted by -- not only
11 Gallatin Police Department but Rhea County Sheriff's Office
12 contacted us to assist with the investigation. At that point
13 we conducted a forensic examination on the computer and
14 forwarded those results of our examination to the National
15 Center for Missing and Exploited Children, where they came
16 back with a report stating the number of images that appeared
17 to be child -- or that were child pornographic of known --
18 what we call known victims. And then of course we reviewed
19 the CDs as well.

20 Q So the --

21 THE COURT: Let me stop you. These are familiar --
22 more familiar to you than they are to me.

23 THE WITNESS: I'm sorry.

24 THE COURT: This report went to whom?

25 THE WITNESS: National Center for Missing and

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1 Exploited Children, or NCMEC, as we call it.

2 THE COURT: Well, let's not do that. National Center
3 for Missing or Exploited Children.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Now, what was sent to them?

6 THE WITNESS: When we conducted the forensic
7 examination on the computer, we send the results to them. What
8 they do is, they compare the images with a database that they
9 have compiled that lists what we call known victims; in other
10 words, those children have been identified as being -- all
11 being under the age of 18, and we know who those children are.
12 So we compare the images that we receive off of the examination
13 with those, and then they send us back a report stating,
14 "Here's the number of images of what we call known victims,
15 whether it be images and/or videos," and they put that in a
16 report to us. They also -- what they also do is, then they
17 notify the victims themselves that their images have appeared
18 again in an investigation either conducted by state, locals, or
19 us.

20 THE COURT: All right.

21 BY MS. BAY:

22 Q So, to be clear, was -- were any of the -- any of
23 CDs or the computers in the defendant's house contain images
24 of child pornography?

25 A They did.

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Barker - Direction Examination

1 Q And was this a handful? Was it more than a hundred?

2 A There were more than 200 images that were of known
3 victims, and I think there were three videos of known victims,
4 that came back in the report.

5 Q And were any images of this minor who began the
6 investigation found in the defendant's computer or CDs?

7 A Yes.

8 Q Also, did you or another agent have an opportunity
9 to interview the defendant?

10 A The defendant-- The defendant-- I did not.
11 Someone else interviewed the defendant.

12 Q Are you familiar with that interview?

13 A Yes, somewhat, yes.

14 Q And did the defendant admit to possessing the child
15 pornography?

16 A Yes.

17 Q Did he admit to having an online relationship with
18 this -- with this individual?

19 A Yes.

20 Q Now, because we are -- this is a detention hearing,
21 did that information lead to an indictment charging the
22 defendant with four counts related to child pornography?

23 A Yes, ma'am.

24 Q On the detention hearing side of this, then, I would
25 ask, do you have any information that would be helpful to the

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1 Court in determining if the defendant is a danger to the
2 community?

3 A After -- after the search warrant was executed by
4 Gallatin Police Department and Rhea County Sheriff's Office,
5 and that would have been approximately January -- I think it
6 was January of 2014, there was a complaint filed with --
7 again, with the National Center for Missing and Exploited
8 Children. They have a cyber tip hotline. There was a
9 complaint filed by an individual who said that someone using
10 the e-mail address of tennesseetrouble2@gmail.com was online
11 saying that they were an 18-year-old girl who was having sex
12 with her younger brother and could provide photographs of that
13 situation.

14 THE COURT: All right. So that is the defendant's
15 e-mail, correct?

16 THE WITNESS: Yes.

17 THE COURT: Someone was on that address saying that
18 they were --

19 THE WITNESS: An 18-year-old girl.

20 THE COURT: And what were they asking for?

21 THE WITNESS: They were saying that they were having
22 an online relationship with a -- with their younger brother
23 and -- or a relationship with their younger brother, and that
24 they could provide photographs of that, and that they
25 were having sex -- that she, she, was having sex with her

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1 younger brother, was the complaint that was received. As a
2 result of that, there was also an IP address that was
3 associated with that. That came back to Charter
4 Communications. We served a subpoena on Charter
5 Communications, and the IP address came back to the residence
6 where Mr. -- where the defendant was living.

7 BY MS. BAY:

8 Q Now, in your investigations an individual who claims
9 to have photographs, themselves, that are of child
10 pornography, what does that indicate to you?

11 A It's been my experience if they're saying that they
12 have the photographs, then they have the photographs, because
13 in dealing with individuals who trade child pornography,
14 they're out there trading, they're not going to go out there
15 and say, "I have --" I've never come across an individual who
16 says, "I have child pornography," and not been able to produce
17 that child pornography to somebody that wants it. And that's
18 really how we receive most of our complaints, where someone
19 says, "I have pictures of child pornography," they produce --
20 or they send those child pornography images, and then that's
21 -- a lot of times that's how we become involved in the
22 investigation. So --

23 Q So is that --

24 A I'm sorry.

25 Q Go ahead.

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1 A So, in my experience, if a person says they have
2 those images, chances are they have those images.

3 Q And is that your experience that it's an offer to
4 trade images?

5 A That's exactly what it is a lot of times, yes,
6 ma'am.

7 Q Now, in addition to that, has anything else come to
8 your attention regarding this defendant and child pornography?

9 A Just last month, in September of 2014, the National
10 Center for Missing and Exploited Children received another
11 cyber tip where an individual claiming to be -- again,
12 claiming to be a female, a teacher, said in conversations with
13 someone online saying that they were a teacher and that they
14 were having sex with their students. They actually -- this
15 person actually sent a photograph to an individual that they
16 were chatting with, and the person came back and said, "That's
17 too young. I don't want anybody that's under the age of 18.
18 Don't send me that again."

19 The person went on to say that he had been having
20 sex with these children by tutoring them after school, and
21 that they -- that was something that they wanted to do, and
22 that they were willing participants. The IP address also came
23 back to Charter Communications. A subpoena served on Charter
24 Communications by the Dayton Police Department in this
25 instance, the IP address also came back to the residence where

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Barker - Direction Examination

1 the defendant lived.

2 Q So the IP address that was tied to the defendant's
3 residence, was that the address that said -- the person saying
4 that they were a teacher having sex with their children, or
5 was that the other side of the conversation?

6 A That was -- the person said they were a teacher,
7 they said they were from Tennessee. I don't remember exactly
8 what town they said they were from, but they said they were
9 from -- it wasn't Dayton, I do remember that, but they just
10 said they were a teacher from Tennessee and that they -- they
11 were having sex with their students.

12 Q Okay. I'm guessing --

13 THE COURT: These events happened after a search
14 warrant was served on him?

15 THE WITNESS: Yes, sir, that's correct.

16 THE COURT: And he was obviously aware the search
17 warrant had been served, because they executed it on him?

18 THE WITNESS: He was there, yes, sir. And so that IP
19 address -- when -- the IP address of the two individuals
20 chatting, the one who claimed to be the teacher, the IP address
21 was Charter Communication. The IP address actually comes back
22 in the name of Jerry Cheeks at 252 Cheeks Lane, I think, and
23 it's in Dayton, Tennessee, which is where the defendant lives.

24 Q Is that -- is his address 252 Cheeks?

25 A Yes.

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Barker - Direction Examination

1 THE COURT: It comes back as Jerry --

2 THE WITNESS: That's-- I believe that's his
3 stepfather.

4 THE COURT: Jerry Cheeks?

5 THE WITNESS: Cheeks on Cheeks Lane.

6 THE COURT: Spell the last name.

7 THE WITNESS: C- -- I think it's C-H-E-E-K-S.

8 THE COURT: All right. So Jerry Cheeks on Cheeks
9 Lane?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right.

12 BY MS. BAY:

13 Q Actually 252 Cheeks Lane.

14 A 252, that's correct.

15 Q Which is the house number of the defendant as well?

16 A Yes, that's correct.

17 Q Aside from those things, is there anything else
18 related to child pornography and this defendant?

19 A There's -- right now -- after the forensic
20 examination was conducted on the computer, there were -- and I
21 don't remember the exact number -- it was over a hundred
22 images of what -- of a girl, one girl, some of the images were
23 not pornographic, other images were pornographic. Based on --
24 we were able to -- from those photographs being sent, we were
25 able to come up with some GPS coordinates of where those --

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Barker - Direction Examination

1 possibility of where those photographs were taken. The
2 photographs -- or the GPS coordinates came back to a town in
3 Kansas. I think it's Atkinson, Kansas. In looking at the GPS
4 coordinates on a map, we were able to determine that the
5 coordinates were very close to the high school there in this
6 particular town in Kansas.

7 At that point I requested the agents -- I sent the
8 photographs to the agents in Kansas City and asked them if
9 they could follow up on these GPS coordinates in an attempt to
10 identify this girl. They showed the photographs to a school
11 resource officer there at this particular high school that's
12 near these GPS coordinates, and the officer said that he was
13 able to identify the girl, said he knew the girl, and said
14 that at that time she was 17 years of age. They are in the
15 process of setting up a forensic interview to interview this
16 girl as we speak. In fact, I think it's actually supposed to
17 happen this week, where they're going to interview this girl
18 concerning these photographs and the relationship she had
19 online with tennessee trouble2.

20 Q And this is separate from the known victims that the
21 National Center for Missing and Exploited Children already
22 have, these --

23 A Correct.

24 Q -- this set of pictures of this girl?

25 A That's correct. And to go a little bit further,

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Barker - Direction Examination

1 there were files set up -- when we did the forensic inter- --
2 or the forensic examination, there were files set up with
3 individual girls in these files, with names, dates of births.
4 So we're in the process of trying to identify those girls as
5 we speak and see if we can locate those girls as well, because
6 based on what we see, it appears that these are
7 photographs that were taken and sent to the defendant, or at
8 least they were on the defendant's computer. So we're in the
9 process of trying to identify those girls as well.

10 THE COURT: Now, you say they were in files?

11 THE WITNESS: In files on the computer.

12 THE COURT: In files on the computer. So the
13 defendant had individual girls in different files --

14 THE WITNESS: Yes.

15 THE COURT: -- with multiple pictures of each one?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay.

18 BY MS. BAY:

19 Q And so-- I don't want to put words in your mouth.
20 So tell me if I'm wrong. So is it your belief, based on how
21 this was set up and the GPS of this one individual and the
22 type -- the pictures themselves, that these pictures were sent
23 directly from the victim to this defendant, or that he
24 received -- he downloaded these from the Internet the way most
25 child pornographers receive theirs?

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Barker - Cross-Examination

1 A Based on the fact that we have one individual who
2 has already filed a complaint and the fact that we have
3 another individual that we now have identified in Kansas, it
4 is our belief that these other -- it is a very strong
5 possibility these other girls are also -- could possibly also
6 be victims that we do not know about or have not been
7 identified as of yet.

8 Q And, lastly, aside from child pornography, have you
9 received any information that would be helpful to the Court
10 regarding this defendant?

11 A In dealing with the Rhea County Sheriff's Office --
12 we had several meetings with them, and I had a meeting with
13 the detective division. What they told me was that over
14 time -- and I didn't get a specific time, but over time they
15 have received numerous complaints about the defendant,
16 complaints not only from -- from the Dayton or Rhea County
17 area, but even complaints from outside the state. For
18 example, they said they've --

19 MR. BERGMANN: Judge, may it please the Court, I
20 understand that this is -- this hearing is not subject to
21 hearsay, hearsay can be brought in. That's double hearsay, and
22 we don't -- there's no indicia of reliability of the second
23 hearsay component. So I would object to it for that reason.

24 THE COURT: All right. The government's position?

25 BY MS. BAY:

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Barker - Cross-Examination

1 Q Well, let me ask a generalized question about the
2 nature of these complaints, as opposed to you saying what one
3 person said another person had said. Okay? So what was the
4 general nature of these complaints, both within Dayton and
5 Rhea County and outside of it?

6 A Outside of Rhea County the complaints were of
7 threats made by the defendant. Inside Rhea County it was
8 complaints of the defendant hanging around parks and schools
9 while the kids were there.

10 Q And what type -- what -- threats of physical
11 violence, or --

12 A Threats of physical violence, yes.

13 MS. BAY: I'll pass the witness.

14 THE COURT: You may cross-examine.

15 MR. BERGMANN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BERGMANN:

18 Q My client's never been arrested for anything that
19 you know -- I'm sorry, never been convicted of anything that
20 you know, right?

21 A That's correct, yes, sir.

22 Q Okay. So -- and there's no evidence that he's ever
23 physically assaulted anybody; there's no conviction for that.
24 Is that correct?

25 A That's correct, yes, sir.

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Barker - Cross-Examination

1 Q All right. Is it possible that on some of these
2 alleged contacts somebody else could have contacted my client?

3 A That's very possible, yes.

4 Q For instance, the girl in Kansas that you mentioned,
5 is it possible that she could have contacted him?

6 A Yes, sir, that's possible.

7 Q All right. You say that a search warrant was
8 executed in -- sometime in January of this year, right?

9 A Yes, sir.

10 Q All right. The state did not pick this up per se,
11 they did not charge my client with any wrongdoing. Is that
12 correct?

13 A Not that I'm aware of, no, sir.

14 Q All right. So at that time, at the time that any of
15 these things allegedly occurred after that search was
16 conducted at my client's residence, no prosecution was
17 forthcoming until Friday. Is that correct? So my client
18 wasn't under conditions of bond, pretrial release, or anything
19 else. Is that correct?

20 A That's correct, yes, sir.

21 Q All right. Have you been to the house yourself?

22 A I have.

23 Q All right. And you're aware that his mother is
24 suffering from cancer and his father -- his stepfather had
25 cancer. I think it's in remission now.

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Barker - Cross-Examination

1 A Yes, sir.

2 Q All right. And they're here today?

3 A Yes, sir.

4 Q You have no reason to believe that they would not
5 comply with the conditions placed upon them, in other words,
6 removal of computers, cutting off access to cell phones,
7 anything that would allow my client to get on the Internet or
8 contact anybody on a computer. Is that correct?

9 A Yes, sir, I agree with that.

10 Q Okay. When we talked about the CDs and DVDs that
11 were seized from the house, you haven't had a chance to go
12 through all those DVDs or CDs, have you?

13 A I've gone through -- I don't know exactly -- I've
14 got it back in the office, but I've gone through hundreds of
15 them, I just don't know exactly how many.

16 Q Some of them have family pictures on them, like
17 family vacations, Christmas, or whatever.

18 A Yes, sir, that's correct.

19 Q When you say hundreds of them have been seized, it's
20 not like hundreds of them contain child pornography; some of
21 them actually contain family albums --

22 A Correct.

23 Q -- Christmas, holidays, and vacations, do they not?

24 A Yes, sir, that's correct.

25 Q And you also -- made some comment about if a person

October 15, 2014 Barker - Examination by The Court

1 says he has those images, chances are he has those images?

2 A It's been my experience in dealing with these cases
3 that people trade these images on a regular basis. So, for
4 example, if someone offers to trade images of child
5 pornography, it's been my -- it's been my experience that they
6 have those images to trade.

7 Q I think the words you used were "chances are." Is
8 that right?

9 A I don't remember exactly what I used, but if that's
10 what I said, then -- "chances," if that's what I said, but my
11 opinion is that they would have them.

12 Q My client has been cooperative with you. Have you
13 talked to my client?

14 A I have not interviewed him, no, sir.

15 Q But it's your information, is it not, that my client
16 has been cooperative with law enforcement?

17 A Yes, sir.

18 Q He didn't try to fight them. He didn't put up a --
19 you know, he wasn't guilty of any kind of disorderly conduct
20 or anything like that when contacted by the authorities?

21 A No, sir, not -- no.

22 Q He hasn't tried to run anyplace since --

23 A No, sir. No, sir, not that I'm aware of.

24 MR. BERGMANN: Okay. One moment.

25 (Off-the-record discussion.)

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Barker - Redirect/Recross

1 MR. BERGMANN: Your Honor, I have no further
2 questions?

3 THE COURT: Any further redirect?

4 MS. BAY: No, Your Honor.

5 THE COURT: All right. Now, let me make certain that
6 I'm understanding something. There were -- there was a search
7 warrant that was executed, and all these images were taken and
8 sent to the National Center for Exploited Children. After that
9 event in January of 2014, there are two different events that
10 happened; one of them is, there is some e-mail being sent to
11 someone about an 18-year-old girl having a relationship with
12 her younger brother that came from his -- the IP address of his
13 home. Is that correct?

14 THE WITNESS: Yes, sir.

15 THE COURT: And then there was, later in September, a
16 cyber tip, a person saying that they were a teacher having sex
17 with some of the children, and that all of that came from the
18 IP address of this defendant's home. Is that correct?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. And when it was checked, it
21 came back to Jerry Cheeks, Jerry Cheeks at 252 Cheeks Lane, and
22 that is the house number where this defendant lives?

23 THE WITNESS: Yes, sir, that's correct.

24 THE COURT: All right. Any further cross-examination
25 of either party?

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Barker - Redirect/Recross

1 MS. BAY: Just one, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BAY:

4 Q When you went to arrest the defendant here in the
5 last week or two, did he admit, or deny, these -- possessing
6 this child pornography?

7 A He said that he was a changed man, that he had
8 changed his life around, he had been going to church, and that
9 he was doing the right thing now, is -- I think is the term --
10 is the words he used.

11 Q Did he claim that his father-in-law or some other
12 person at the residence was -- was a -- was doing this stuff
13 online?

14 A I did not hear that.

15 MS. BAY: Okay.

16 RECROSS-EXAMINATION

17 BY MR. BERGMANN:

18 Q Did you -- just as a matter of course, did you read
19 him his *Miranda* rights?

20 A I did not question him. He just -- he was blurting
21 that out as we were -- as we were walking him to the car.

22 Q Okay. So there's no waiver of *Miranda* rights,
23 there's no-- Did you record his statement?

24 A I didn't take a statement from him. He was -- as we
25 were taking him to the car, he was crying and just making

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Barker - Further Redirect

1 statements as he was walking to the car. I did not question
2 him at all, so therefore I didn't Mirandize him.

3 Q Okay. Did you-- But he wasn't free to go, was he,
4 at that point?

5 A No, sir.

6 Q He was under arrest.

7 A He was in handcuffs, correct.

8 Q Did you reduce his statement to writing later on?

9 A I did.

10 Q And do you have that --

11 A I do.

12 Q -- available?

13 A I do.

14 Q And there are other people who live at that
15 residence. Is that correct?

16 A There were --

17 Q On Cheeks Lane?

18 A As I recall, when we arrested him there were three
19 other people there, yes.

20 Q So -- but other people do live there?

21 A As far as I know, yes.

22 Q With access to those computers, right?

23 A I would assume so. I don't know exactly, but I
24 would assume so.

25 Q And one of those computers -- one of those, I guess,

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Lindsey - Direct Examination

1 searches came back to Jerry Cheeks. Is that right?

2 A The IP addresses?

3 Q Yes.

4 A Yes.

5 Q And it's also possible, if you have somebody else's
6 e-mail address, that you can actually -- with the same IP
7 address, you can actually, even though you're not the person
8 to whom that's registered, you can actually get online and use
9 the IP -- of course that's the IP address, but also the e-mail
10 address. Is that correct?

11 A I'm not sure I understand your --

12 Q Well, I'm just saying, if you -- if I've got your
13 password, I've got your e-mail address and I've got your
14 password, I can use that?

15 A Oh, yes, sure.

16 Q Anybody can use it?

17 A Sure.

18 MR. BERGMANN: No further questions.

19 MS. BAY: I'm sorry, Your Honor. I just have one
20 question for clarification. I apologize.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. BAY:

23 Q So let me ask you this: The IP address that comes
24 back to Jerry Cheeks, was that the person whose Internet
25 access -- whose Internet service that was in?

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Lindsey - Direct Examination

1 A That's correct. That's who was paying for the
2 service.

3 Q Okay. So it's not like an individual IP for each
4 person in the house?

5 A No. No, ma'am.

6 MS. BAY: Okay.

7 THE COURT: I think that's all. You may step down.

8 THE WITNESS: Thank you, sir.

9 (Witness excused.)

10 THE COURT: Next witness.

11 MS. BAY: We call Candace Lindsey.

12 (Brief pause.)

13 CANDACE LINDSEY,
14 called as a witness at the instance of the government,
15 having been first duly sworn, was examined, and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. BAY:

19 Q Will you state your name for the record, please?

20 A Candace Lindsey.

21 Q Where do you work?

22 A U. S. Probation.

23 Q How long have you been with the U. S. Probation?

24 A Three years. Three and a half years.

25 Q And how long have you been in the probation

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Lindsey - Cross-Examination

1 business?

2 A Nine years.

3 Q Are part of your duties here at the U. S. Probation
4 to prepare pretrial services reports?

5 A Yes.

6 Q And as part of those reports is there a
7 recommendation of the pretrial office regarding detention or
8 release?

9 A Yes, it is.

10 Q And also an assessment of danger?

11 A Yes.

12 Q As well as an assessment of nonappearance?

13 A Exactly.

14 Q And did you prepare the report for Mr. Krzeczkowski?

15 A Yes.

16 Q Now, having heard what you did today from Special
17 Agent Barker, does that change anything as far as the
18 assessment of danger or assessment of nonappearance or the
19 recommendation?

20 A It does. Initially we recommended that the
21 defendant be temporarily detained in lieu of us doing a home
22 evaluation. After listening to the testimony from the agent
23 that was conducting the investigation on the defendant and
24 hearing that the defendant continued to engage in these acts
25 even after having a search warrant performed at his residence,

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1 the probation office would like to change their recommendation
2 to detention.

3 MS. BAY: I have nothing else, Your Honor.

4 THE COURT: You may cross-examine.

5 MR. BERGMANN: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BERGMANN:

8 Q That's even though -- that's all based on hearsay,
9 right?

10 A Based on the information that the agent provided.

11 Q Right, but which is hearsay. So based on hearsay
12 information, you're -- you're changing your mind. Is that
13 what you're saying?

14 A Well, it didn't sound like hearsay to me,
15 necessarily. It sounded like he had a forensic evaluation
16 done, that they were able to link the information found back
17 to the defendant. I'm not sure if that's hearsay.

18 Q Okay. What if the computers were removed from the
19 residence, all access on iPhones and otherwise -- all access
20 to Internet was cut off, and he was monitored with, say,
21 electronic equipment or whatever to prevent him from leaving
22 the house? Would your recommendation then change back to the
23 way it was before?

24 A No.

25 Q Would that not make him -- I mean, if he doesn't

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1 have access to computers, if he doesn't have access to the
2 Internet, then he can't contact anybody. If he's monitored,
3 if he's got an electronic monitoring device and he can't get
4 beyond his porch, then he can't make contact with any of these
5 alleged victims, can he?

6 A In my opinion, one of the best predictors of future
7 behavior is past behavior. So I'm not sure if the defendant
8 was actually leaving his residence to engage in -- in looking
9 at child pornography. So the fact that we put him on
10 electronic monitoring, I don't know if that would stop him
11 from looking at child pornography. If you're already in your
12 home and you're engaging in that conduct, putting you on
13 electronic monitoring is doing nothing but keeping you at home
14 anyway. So I'm not sure if that would actually stop you from
15 doing that --

16 Q Well, you missed the first part of my --

17 A Okay.

18 Q -- statement, and that was that if he had no access
19 to the Internet, okay, if -- and you're aware the fact his
20 mother has cancer, is that correct, and that she is -- she's
21 home?

22 A She did mention that to me when I spoke to her
23 earlier, yes.

24 Q All right. And she is undergoing chemo, and has to
25 be home all the time, and so is able to monitor his

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1 activities, whatever conditions that the Judge sets forth,
2 monitor those conditions. Would that not provide a reasonable
3 assurance that he's not a danger to society? Now, he's not a
4 risk to flee, is he, because he has no place to go, right?
5 His wife's here. His family's here. So he has ties to the
6 community. Is that correct?

7 A Right. He does have ties to the community --

8 Q Right. And his past, he has no criminal past,
9 right? I mean, you checked, and -- the database, the NCIC --

10 A Right.

11 Q -- and he does not have a conviction?

12 A We were not able to find anything criminally related
13 to the defendant.

14 Q Right. So he's not -- in that regard, he's not a
15 danger to society, based on any kind of prior conduct, because
16 he's never been convicted of anything, right? And he's 41
17 years old. Is that correct?

18 A I'm not sure of his exact age. Yes, I think -- yes,
19 he is 41, uh-huh.

20 Q All right. So in 41 years he's never been convicted
21 of anything. He could stay home with his parents, who have
22 promised that they'll take all the computers out of the house
23 or disconnect them or whatever, password-protect any computers
24 that are allowed to remain in the house, remove their cell
25 phones or Internet access from the cell phones. Would that

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1 not protect society?

2 A I'm not really sure that that would protect anybody.
3 I mean, if he's willing to, based on what the agents say,
4 engage in this activity, even after having a search warrant
5 performed at his residence, knowing that authorities are
6 looking at your activities, if he's still willing to engage in
7 that type of behavior, who's to say that he's not still
8 willing to go above and beyond to engage in that same type of
9 behavior, even when placed on electronic monitoring, or even
10 when computers are taken outside of his home? That doesn't
11 stop other people from bringing stuff to him, or, I mean, we
12 wouldn't necessarily make him stay in his residence all day
13 every day. So if he is allowed to go outside of his
14 residence, who's to say that he wouldn't find a way to engage
15 in that type of behavior even though?

16 Q What if you do confine him to his residence? And I
17 think the statement earlier was made that you have no reason
18 to believe that his parents, his stepfather and his mother,
19 aren't going to do what they're expected to do --

20 A Uh-huh.

21 Q -- if he gets to come home?

22 A Right. That's their end, though. I'm not saying
23 that they would violate any laws. I think that they would do
24 what we're asking them to do. We're talking about him and his
25 behavior.

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1 Q Which would do away with his access to any Internet
2 connections, right, especially if he -- especially if he's
3 confined to the home on electronic monitoring, he has no
4 computers, he has no access to computers. These people aren't
5 going to let him get on the cell phones and access the
6 Internet. He's at home. He's not a danger to anybody. He
7 doesn't have a history of criminal convictions.

8 A He doesn't.

9 Q Right. So the combination -- the combination of
10 conditions about which we're speaking would protect society,
11 would it not? And, also, he's not a risk to flee, because the
12 only family that I know of that he's got or that he's been in
13 recent contact with is his family that's sitting here in the
14 courtroom. He's not going to leave his mother, who is, I
15 guess --

16 MS. BAY: Your Honor, I don't know if this is a
17 proffer of information or --

18 THE COURT: It's final argument.

19 Are you going to get to a question, Mr. Bergmann?

20 MR. BERGMANN: Well, okay, the question --

21 THE COURT: I don't believe the witness is going to
22 change her mind, based on what I've heard so far.

23 BY MR. BERGMANN:

24 Q Do you agree with that?

25 A Which question? Sounded like a bunch of them.

1 Q All of them. Would that not assure his appearance
2 in court, and would that not protect society?

3 A I don't think that he would be a risk of flight,
4 necessarily. There are factors that would suggest that.
5 But -- just from my assessment, I don't necessarily believe he
6 would be a risk of flight, but the danger to the community,
7 based on the information that was provided today, does make me
8 feel like he would be a danger to the community. Like I said
9 before, if he's been -- if he's under investigation --
10 obviously if they conduct a search warrant, they're
11 investigating you, and he's still engaging in that type of
12 behavior, I don't think there's conditions that we can place
13 on someone that would stop them from doing something that
14 they're willing to do even knowing that they're being
15 investigated.

16 MR. BERGMANN: No further questions, Your Honor.
17 Thank you.

18 THE COURT: You may step down.

19 (Witness excused.)

20 MS. BAY: We have no further witnesses, Your Honor.

21 THE COURT: All right. Is there going to be proof
22 for the defendant?

23 MR. BERGMANN: No, Your Honor. I'll make a proffer.

24 THE COURT: All right. Proffer for the defendant.

25 MR. BERGMANN: Thank you, Your Honor. And I think

1 we've already -- I've already gotten into this to a large
2 extent. His family's here. His pastor's here. He's got a
3 friend here. His wife's here, part of the family obviously.
4 His wife, mother, stepfather, pastor, and a friend, they are
5 all supportive of him. They are -- they will do whatever Your
6 Honor requests of them. They will remove the computers from
7 the house. They will not only limit but they'll do away with
8 Internet access.

9 His mother needs him, quite frankly. She's in her
10 second round of cancer treatments. This is not the first time
11 she's had it. The stepfather has had cancer in the past, and
12 he's in remission.

13 His wife is here. She is supportive of him.

14 And we've had a conference -- we've had several
15 conferences, but one lengthy conference in person. If Your
16 Honor sets parameters, if Your Honor establishes conditions by
17 which my client has to abide, no computers in the house, do
18 away with the cell phones, whatever, and if these people abide
19 by those conditions -- and they will. I think the other side
20 said, you know, "We have no reason to doubt that." Then he's
21 not a danger to society, because he doesn't have access, he
22 can't get to the computer or the cell phone, he can't access
23 the Internet.

24 He certainly is not a risk to flee. His family is
25 here. He has no place to go. His wife's here. His mother's

1 here. He's not going to leave her in her condition. His
2 stepfather's here. And his church is here. His pastor is
3 here. And he was willing to come down, and he is here today.

4 Your Honor, the government has the proof -- has the
5 burden of proof by clear and convincing evidence that there
6 are no -- there is no combination of conditions that will
7 suffice to protect society and to assure his -- negate his
8 assurance of appearance in court. We submit that there are --
9 the conditions that we've talked about are conditions that
10 will assure his appearance in court, and that will protect the
11 safety of the community.

12 He doesn't have a prior record. He's not a violent
13 offender. This is the first time he's been in -- certainly in
14 federal court. And like I said, he has not been convicted.
15 History and characteristics, he's got family ties, he's got
16 community ties, he's lived here --

17 How long have you lived here?

18 THE DEFENDANT: Since 1989.

19 MR. BERGMANN: -- since 1989, so many, many years.
20 He's not going anyplace.

21 Past conduct, no record, no criminal history. Your
22 Honor, he is a prime candidate to go home with whatever
23 conditions Your Honor imposes—home confinement, ankle
24 bracelet, electronic monitoring device. That's the same
25 thing, obviously. But we submit that he is a candidate to go

1 home.

2 It's my understanding he's received some death
3 threats at Silverdale, and I'm concerned about him for that
4 reason. I think his family is concerned. I know he's
5 concerned. So if Your Honor lets him go home, he's not going
6 anywhere other than my office and the probation office. So we
7 think that he is a prime candidate to go home, and we would
8 ask Your Honor to release him on whatever conditions Your
9 Honor deems applicable in this case.

10 THE COURT: Thank you, Mr. Bergmann.

11 MR. BERGMANN: Yes, sir.

12 THE COURT: All right. I'll hear argument, the
13 government first.

14 MS. BAY: Your Honor, I would say that the defendant
15 has not overcome the rebuttable presumption in this case. I
16 know Mr. Bergmann has said that the defendant would not leave
17 his house, ever, except for visits to his lawyer, visits to his
18 probation officer. I assume visits to the church would also be
19 there, visits to doctors. It's very easy -- every public
20 library in the state has a computer with Internet access on
21 there, every -- just about every smartphone, I mean, you know,
22 it's -- I don't know that the people behind us would -- behind
23 me would bring the defendant a smartphone, but there are plenty
24 of other people in the community who might. And I think that
25 the defendant's use of other identities and, you know, reaching

1 out to these individuals also indicates his manipulativeness.
2 And I believe that there is still a danger to the community,
3 and that no conditions or combination of conditions would
4 prevent that. I ask that he be detained.

5 THE COURT: Thank you.

6 Mr. Bergmann?

7 MR. BERGMANN: Your Honor, I did it again. I made my
8 argument at the tail end of my argument. So I apologize.

9 THE COURT: I understand. It's not -- it's not
10 always possible to resist that.

11 All right. The Court has the question of release or
12 detention for Mr. Krzeczkowski. The indictment in this case
13 charges various forms of child pornography, production of it
14 in Count 1, receipt and distribution and another possession of
15 it in Count 4. Because of the nature of this charge, the
16 Congress has determined that there is a rebuttable presumption
17 that exists that he is both a risk of flight and danger to the
18 community. The allegation is that he has been using, at a
19 minimum, child pornography. And it's difficult to understand
20 why that's become such a problem in our country, but it is.
21 He is presumed innocent, of course, of that charge, but
22 nonetheless he is charged with it. And the charge itself
23 brings that rebuttable presumption to the Court's attention.

24 Now, the difficulty Mr. Krzeczkowski has-- And he
25 has a family, he's got a pastor here, and that is wonderful

1 that he has all this support. But the things that I can't get
2 around in this are the fact that after the search warrant was
3 executed, there are two examples of what appears to be
4 Mr. Krzeczkowski using the computer to continue his conduct.
5 And I do not think, when that set of facts is considered,
6 there is any way he can rebut that presumption; I just do not.
7 I mean, he has -- he has good support, and he does not have a
8 prior record, but I conclude that he has continued to do this,
9 that he is being -- that he is using, you know, false names,
10 making things up, I don't know why, but it looks to me like
11 the evidence in the case supports that. So I will order his
12 detention based upon a danger. I conclude he has not rebutted
13 it.

14 I'm sorry for the family, but these are serious
15 charges, and the law that I have to abide by is -- provides
16 for that rebuttable presumption, and I do not find that he has
17 rebutted it.

18 Anything further for the government?

19 MS. BAY: No, Your Honor.

20 THE COURT: Anything further, Mr. Bergmann?

21 MR. BERGMANN: No, thank you, Your Honor.

22 THE COURT: Let this hearing be adjourned.

23 END OF PROCEEDINGS

24

25

1 I, Elizabeth B. Coffey, do hereby certify that I
2 reported in machine shorthand the proceedings in the
3 above-styled cause, and that this transcript is an accurate
4 record of said proceedings.

5

6

7 s/Elizabeth B. Coffey
8 Elizabeth B. Coffey,
9 Official Court Reporter

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